

**FILED**

FEB 15 2011

**Board of Vocational Nursing  
and Psychiatric Technicians**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ALFREDO TERRAZAS  
Supervising Deputy Attorney General  
3 LINDA K. SCHNEIDER  
Deputy Attorney General  
4 State Bar No. 101336  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2071  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. VN-2008-376

12 **PAUL NICHOLAS GIOIA**  
13 2747 Laurie Lane  
14 LaVerne, CA 91750

**A C C U S A T I O N**

15 Vocational Nurse License No. VN 166298

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
20 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
21 Technicians, Department of Consumer Affairs.

22 2. On or about February 10, 1994, the Board of Vocational Nursing and Psychiatric  
23 Technicians issued Vocational Nurse License Number VN 166298 to Paul Nicholas Gioia  
24 (Respondent). The license was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on November 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Business and Professions Code (Code) section 118, subdivision (b), provides:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

6. Section 2892.1 of the Code states, in pertinent part:

Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration upon filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of any fees due pursuant to Section 2895.1.

....

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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1           8.     Section 490 of the Code states:

2                 (a) In addition to any other action that a board is permitted to take against a  
3                 licensee, a board may suspend or revoke a license on the ground that the licensee has  
4                 been convicted of a crime, if the crime is substantially related to the qualifications,  
5                 functions, or duties of the business or profession for which the license was issued.

6                 (b) Notwithstanding any other provision of law, a board may exercise any  
7                 authority to discipline a licensee for conviction of a crime that is independent of the  
8                 authority granted under subdivision (a) only if the crime is substantially related to the  
9                 qualifications, functions, or duties of the business or profession for which the  
10                licensee's license was issued.

11               (c) A conviction within the meaning of this section means a plea or verdict of  
12               guilty of a conviction following a plea of nolo contendere. Any action that a board is  
13               permitted to take following the establishment of a conviction may be taken when the  
14               time for appeal has elapsed, or the judgment of conviction has been affirmed on  
15               appeal, or when an order granting probation is made suspending the imposition of  
16               sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of  
17               the Penal Code.

18               (d) The Legislature hereby finds and declares that the application of this  
19               section has been made unclear by the holding in *Petropoulos v. Department of Real*  
20               *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a  
21               significant number of statutes and regulations in question, resulting in potential harm  
22               to the consumers of California from licensees who have been convicted of crimes.  
23               Therefore, the Legislature finds and declares that this section establishes an  
24               independent basis for a board to impose discipline upon a licensee, and that the  
25               amendments to this section made by Senate Bill 797 of the 2007-2008 Regular  
26               Session do not constitute a change to, but rather are declaratory of, existing law.

27           9.     Section 492 of the Code states, in pertinent part:

28                 Notwithstanding any other provision of law, successful completion of any  
29                 diversion program under the Penal Code, or successful completion of an alcohol or  
30                 drug problem assessment program . . . shall not prohibit any agency . . . from  
31                 taking disciplinary action against a licensee or from denying a license for professional  
32                 misconduct, notwithstanding that evidence of that misconduct may be recorded  
33                 pertaining to an arrest.

34                 . . . .

35           10.    Section 493 of the Code states:

36                 Notwithstanding any other provision of law, in a proceeding conducted by a  
37                 board within the department pursuant to law to deny an application for a license or to  
38                 suspend or revoke a license or otherwise take disciplinary action against a person who  
39                 holds a license, upon the ground that the applicant or the licensee has been convicted  
40                 of a crime substantially related to the qualifications, functions, and duties of the  
41                 licensee in question, the record of conviction of the crime shall be conclusive  
42                 evidence of the fact that the conviction occurred, but only of that fact, and the board  
43                 may inquire into the circumstances surrounding the commission of the crime in order  
44                 to fix the degree of discipline or to determine if the conviction is substantially related  
45                 to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

11. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

....

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

12. Section 2878.5 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code.

(b) Use of any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210 of Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of conviction is conclusive evidence thereof.

....

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to narcotics or dangerous drugs as specified in subdivision (b).

13. Section 2878.8 of the Code states:

The board may deny any application or may suspend or revoke any license issued under this chapter based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board. A certified copy of the finding shall be conclusive evidence of that action provided that, if from another state, the findings establish an act which if committed in California would be grounds for discipline.

#### REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 2518.6(b)(4), states:

....

(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

....

(4) Abstaining from chemical/substance abuse; and

....

15. California Code of Regulations, title 16, section 2521, states, in pertinent part:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

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1 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
2 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of  
3 the Business and Professions Code.

4 16. California Code of Regulations, title 16, section 2522 states, in pertinent part:

5 When considering . . . b) the suspension or revocation of a license on the  
6 ground that a licensee has been convicted of a crime . . . the Board in evaluating the  
7 rehabilitation of an individual and his or her present eligibility for a license, will  
8 consider the following criteria:

9 (1) Nature and severity of the act(s), offense(s), or crime(s) under  
10 consideration.

11 (2) Actual or potential harm to the public.

12 (3) Actual or potential harm to any patient.

13 (4) Overall disciplinary record.

14 (5) Overall criminal actions taken by any federal, state or local agency or  
15 court.

16 (6) Prior warnings on record or prior remediation.

17 (7) Number and variety of current violations.

18 (8) Mitigation evidence.

19 (9) In case of a criminal conviction, compliance with terms of sentence and/or  
20 court-ordered probation.

21 (10) Time passed since the act(s) or offense(s) occurred.

22 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
23 Penal Code section 1203.4.

24 (12) Cooperation with the Board and other law enforcement or regulatory  
25 agencies.

26 (13) Other rehabilitation evidence.

#### 27 COST RECOVERY

28 17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
administrative law judge to direct a licensee found to have committed a violation or violations of  
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 **(December 17, 2008 Criminal Conviction for Possession of a Controlled Substance**  
3 **in July and August 2008)**

4 18. Respondent is subject to disciplinary action under Code sections 490 and 2761,  
5 subdivision (f), in that on or about December 17, 2008, in the Superior Court of California,  
6 County of Siskiyou, Yreka Division, in the case entitled *The People of the State of California v.*  
7 Case No. YKCRF 08-1187, Respondent was convicted, on his plea of guilty, of violating Health  
8 and Safety Code section 11377(a) (Possession of a Controlled Substance), a misdemeanor, a  
9 crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.  
10 As a result of a plea agreement, counts 1 and 2 (11350(a), Possession of a Controlled Substance  
11 and 11368, forging or Altering a Prescription, felonies) were dismissed.

12 19. The facts that led to the conviction are that between or about July and August of  
13 2008, while working as a licensed vocational nurse at Fairchild Medical Center (Fairchild),  
14 Respondent faxed forged prescriptions to local pharmacies for the controlled substance Vicodin.

15 20. On or about August 5, 2008, Raley's Pharmacy Manager, R.S., contacted the Director  
16 of Nursing at Fairchild, K.S., concerning Respondent. R.S. advised K.S. that several of the local  
17 pharmacies were concerned that Respondent was using the hospital fax machine to fax  
18 false/forged prescriptions for Vicodin.

19 21. On August 6, 2009, Respondent was seen coming into Fairchild on his day off to use  
20 the fax machine. Respondent left Fairchild before anyone could question him. Approximately 20  
21 minutes later, K.S. received a call from Raley's Pharmacy informing her that Respondent was at  
22 the pharmacy to pick up a faxed prescription from the hospital. The pharmacist contacted the  
23 local police.

24 22. On or about August 8, 2008, the Board of Vocational Nursing and Psychiatric  
25 Technicians (Board) received a written complaint against Respondent from K.S. in which she  
26 advised that Respondent resigned his position as a licensed vocational nurse after it was

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1 discovered that he had forged prescriptions for the controlled substance Vicodin and that this  
2 information had also been turned over to the Yreka Police Department.

3 23. On or about September 11, 2008, the Board received a letter signed by Respondent  
4 wherein he admitted to an opiate addiction.

5 24. As a result of the conviction, Respondent was placed on summary probation for three  
6 years and ordered to obey all laws, notify the court of any change of address within 10 days, and  
7 to submit to search and seizure. A hearing was scheduled for December 13, 2011, for deferred  
8 entry of judgment/possible dismissal pursuant to Penal Code section 1203.4.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct- Commission of any Act Involving Dishonesty)**

11 25. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on the  
12 grounds of unprofessional conduct, as defined by Code section 2878(j), in that between or about  
13 July and August of 2008, while employed as a licensed vocational nurse at Fairchild Memorial  
14 Hospital, Respondent committed acts involving dishonesty, as detailed in paragraphs 18-24,  
15 above, which are incorporated here by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct-Obtain, Possess,  
18 and/or Use of a Controlled Substances)**

19 26. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on the  
20 grounds of unprofessional conduct, as defined by Code section 2878.5, subsections (a) and (b), in  
21 that in or about July and August 2008, while employed as a licensed vocational nurse at Fairchild  
22 Memorial Hospital, in that he obtained, possessed and used the drug Vicodin without a valid  
23 prescription, as detailed in paragraphs 18-24, above, which are incorporated here by reference.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Use of Controlled Substances in Dangerous Manner)**

3 27. Respondent is subject to disciplinary action pursuant to Code section 2878(a), on the  
4 grounds of unprofessional conduct, as defined by Code section 2878.5 (b) in that between or  
5 about July and August 2008, while employed as a licensed vocational nurse at Fairchild Memorial  
6 Hospital, used Vicodin to an extent or in a manner dangerous or injurious to himself and to the  
7 extent that the use impaired his ability to practice vocational nursing safely by using Vicodin  
8 without a prescription, as detailed in paragraphs 18-14, which are incorporated herein by  
9 reference.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Disciplinary Action by Another Health Care Professional Licensing Board)**

12 28. Respondent is subject to disciplinary action pursuant to Code section 2878.8 in that  
13 on or about July 16, 2009, the Oregon State Board of Nursing accepted the voluntary surrender of  
14 Respondent's Oregon Nursing License 20050339LPN via a Stipulated Surrender. The Oregon  
15 Nursing Board Discipline was based on the California conviction for possession of a controlled  
16 substance.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct-Failure to Adhere to Ethical/Behavioral Standards  
19 of Professional Practice)**

20 29. Respondent is subject to disciplinary action pursuant to Code section 2878(a) and  
21 California Code of Regulations, title 16, section 2518.6(b)(4), in that Respondent failed to adhere  
22 to ethical and behavioral standards of professional practice by failing to abstain from  
23 chemical/substance abuse.

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**PRAYER**

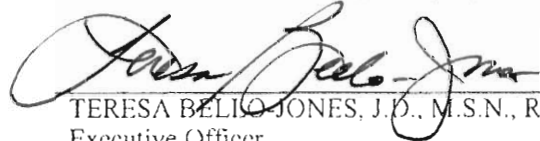
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Licensed Vocational Nurse License Number VN 166298 issued to Respondent Paul Nicholas Gioia;

2. Ordering to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: February 15, 2011



TERESA BELIO JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
Complainant

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